

**Introduced by Senator Sher**February 12, 2003

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An act to amend Section 383.5 of the Public Utilities Code, relating to energy.

## LEGISLATIVE COUNSEL'S DIGEST

SB 183, as introduced, Sher. Energy: renewable technologies.

Under the Public Utilities Act, the Public Utilities Commission requires electrical corporations to identify a separate rate component to fund in-state operation and development of existing and new and emerging renewable resources technologies. This rate component is a nonbypassable element of local distribution and collected on the basis of usage. Existing law requires specified electrical corporations to collect specific amounts to support in-state operation and development of existing and new and emerging renewable resources technologies. Existing law also requires the State Energy Resources Conservation and Development Commission (Energy Commission) to transfer funds collected for in-state operation and development of existing and new and emerging renewable resources technologies into the Renewable Resource Trust Fund. Existing law requires that 17.5% of the funds collected to accomplish the funding of in-state operation and development of existing and new and emerging renewable resources technologies, after deducting certain administrative costs, be used for a multiyear, consumer-based program to foster the development of emerging renewable technologies in distributed generation applications by providing monetary rebates, buydowns, or equivalent incentives. The Emerging Renewable Resources Account is established within the Renewable Resource Trust Fund, to accomplish these purposes.



This bill would require the Energy Commission to make reasonably available, regularly updated information on funds in the Emerging Renewable Resources Account that remain available for the above stated purposes.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 383.5 of the Public Utilities Code is  
2 amended to read:

3 383.5. (a) It is the intent of the Legislature in establishing this  
4 program, to increase the amount of renewable electricity  
5 generated per year, so that it equals at least 17 percent of the total  
6 electricity generated for consumption in California.

7 (b) As used in this section, the following terms have the  
8 following meaning:

9 (1) “In-state renewable electricity generation technology”  
10 means a facility that meets all of the following criteria:

11 (A) The facility uses biomass, solar thermal, photovoltaic,  
12 wind, geothermal, fuel cells using renewable fuels, small  
13 hydroelectric generation of 30 megawatts or less, digester gas,  
14 municipal solid waste conversion, landfill gas, ocean wave, ocean  
15 thermal, or tidal current, and any additions or enhancements to the  
16 facility using that technology.

17 (B) The facility is located in the state or near the border of the  
18 state with the first point of connection to the Western Electricity  
19 Coordinating Council (WECC) transmission system located  
20 within this state.

21 (C) For the purposes of this subdivision, “solid waste  
22 conversion” means a technology that uses a noncombustion  
23 thermal process to convert solid waste to a clean burning fuel for  
24 the purpose of generating electricity, and that meets all of the  
25 following criteria:

26 (i) The technology does not use air or oxygen in the conversion  
27 process, except ambient air to maintain temperature control.

28 (ii) The technology produces no discharges of air contaminants  
29 or emissions, including greenhouse gases as defined in Section  
30 42801 of the Health and Safety Code.



1 (iii) The technology produces no discharges to surface or  
2 groundwaters of the state.

3 (iv) The technology produces no hazardous wastes.

4 (v) To the maximum extent feasible, the technology removes  
5 all recyclable materials and marketable green waste compostable  
6 materials from the solid waste stream prior to the conversion  
7 process and the owner or operator of the facility certifies that the  
8 those materials will be recycled or composted.

9 (vi) The facility at which the technology is used is in  
10 compliance with all applicable laws, regulations, and ordinances.

11 (vii) The technology meets any other conditions established by  
12 the State Energy Resources Conservation and Development  
13 Commission.

14 (viii) The facility certifies that any local agency sending solid  
15 waste to the facility is in compliance with Division 30  
16 (commencing with Section 40000) of the Public Resources Code,  
17 has reduced, recycled, or composted solid waste to the maximum  
18 extent feasible, and shall have been found by the California  
19 Integrated Waste Management Board to have diverted at least 30  
20 percent of all solid waste through source reduction, recycling and  
21 composting.

22 (2) “Report” means the report entitled “Investing in  
23 Renewable Electricity Generation in California” (June 2001,  
24 Publication Number P500-00-022) submitted to the Governor and  
25 the Legislature by the State Energy Resources Conservation and  
26 Development Commission.

27 (3) “Energy Commission” means the State Energy Resources  
28 Conservation and Development Commission.

29 (c) (1) Twenty percent of the funds collected pursuant to  
30 paragraph (6) of subdivision (c) of Section 381 shall be used for  
31 programs that are designed to improve the competitiveness of  
32 existing in-state renewable electricity generation technology  
33 facilities, and to secure for the state the environmental, economic,  
34 and reliability benefits that continued operation of those facilities  
35 will provide. Eligibility for incentives under this subdivision shall  
36 be limited to those technologies found eligible for funds by the  
37 Energy Commission pursuant to paragraphs (5), (6), and (8) of  
38 subdivision (c) of Section 399.6.

39 (2) Any funds used to support in-state renewable electricity  
40 generation technology facilities pursuant to this subdivision shall

1 be expended in accordance with the provisions of the report,  
2 subject to all of the following requirements:

3 (A) Of the funding for existing renewable electricity  
4 generation technology facilities available pursuant to this  
5 subdivision, 75 percent shall be used to fund first tier technologies,  
6 including biomass and solar electric technologies and 25 percent  
7 shall be used to fund second tier wind technologies.

8 (B) The Energy Commission shall reexamine the tier structure  
9 as proposed in the report and adjust the structure to reflect market  
10 and contractual conditions. The Energy Commission shall also  
11 consider inflation when adjusting the structure.

12 (C) The Energy Commission shall establish a cents per  
13 kilowatthour production incentive, not to exceed the payment caps  
14 per kilowatthour established in the report, as those payment caps  
15 are revised in guidelines adopted by the commission, representing  
16 the difference between target prices and the market clearing price  
17 for electricity, if sufficient funds are available. If there are  
18 insufficient funds in any payment period to pay either the  
19 difference between the target and market clearing price or the  
20 payment caps, production incentives shall be based on the amount  
21 determined by dividing available funds by eligible generation. The  
22 market clearing price for electricity shall be determined by the  
23 Energy Commission based on the energy prices paid to nonutility  
24 power generators as authorized by the commission, or on  
25 otherwise available measures of market price. For the first tier  
26 biomass technologies, the Energy Commission shall establish a  
27 time-differentiated incentive structure that encourages plants to  
28 run the maximum feasible amount of time and that provides a  
29 higher incentive when the plants are receiving the lowest price.  
30 The Energy Commission may establish a different incentive rate  
31 within the same technology tier to account for discounted  
32 contracts.

33 (D) Facilities that are eligible to receive funding pursuant to  
34 this subdivision shall be registered in accordance with criteria  
35 developed by the Energy Commission and those facilities may not  
36 receive payments for any electricity produced that has any of the  
37 following characteristics:

38 (i) Is sold at monthly average rates equal to or greater than the  
39 applicable target price, as determined by the Energy Commission.



(ii) Is that portion of electricity generation attributable to the use of qualified agricultural biomass fuel, for a facility that is receiving fuel-based incentives through the Agricultural Biomass-to-Energy Incentive Grant Program established pursuant to Part 3 (commencing with Section 1101) of Division 1 of the Food and Agricultural Code. Notwithstanding subdivision (f) of Section 1104 of the Food and Agricultural Code, facilities that receive funding from the Agricultural Biomass-to-Energy Incentive Grant Program are eligible to receive funding pursuant to this subdivision.

(iii) Is used onsite or is sold to customers in a manner that excludes competitive transition charge payments, or is otherwise excluded from competitive transition charge payments.

(d) (1) Fifty-one and one-half percent of the funds collected pursuant to paragraph (6) of subdivision (c) of Section 381, shall be used for programs designed to foster the development of new in-state renewable electricity generation technology facilities, and to secure for the state the environmental, economic, and reliability benefits that continued operation of those facilities will provide.

(2) Any funds used for new in-state renewable electricity generation technology facilities pursuant to this subdivision shall be expended in accordance with the report, subject to all of the following requirements:

(A) In order to cover the above market costs of renewable resources as approved by the commission and selected by retail sellers to fulfill their obligations under Article 16 (commencing with Section 399.11), the Energy Commission shall award funds in the form of supplemental energy payments, subject to the following criteria:

(i) The Energy Commission may establish caps on supplemental energy payments. The caps shall be designed to provide for a viable energy market capable of achieving the goals of Article 16 (commencing with Section 399.11). The Energy Commission may waive application of the caps to accommodate a facility, if it is demonstrated to the satisfaction of the Energy Commission, that operation of the facility would provide substantial economic and environmental benefits to end use customers subject to the funding requirements of Section 381.

(ii) Supplemental energy payments shall be awarded only to facilities that are eligible for funding under this subdivision.

(iii) Supplemental energy payments awarded to facilities selected by an electrical corporation pursuant to Article 16 (commencing with Section 399.11) shall be paid for the lesser of 10 years, or the duration of the contract with the electrical corporation.

(iv) The Energy Commission shall reduce or terminate supplemental energy payments for projects that fail either to commence and maintain operations consistent with the contractual obligations to an electrical corporation, or that fail to meet eligibility requirements.

(v) Funds shall be managed in an equitable manner in order for retail sellers to meet their obligation under Article 16 (commencing with Section 399.11).

(B) The Energy Commission may determine as part of a solicitation, that a facility that does not meet the definition of “in-state renewable electricity generation technology” facility solely because it is located outside the state, is eligible for funding under this subdivision if it meets both of the following requirements:

(i) It is located so that it is or will be connected to the Western Electricity Coordinating Council (WECC) transmission system.

(ii) It is developed with guaranteed contracts to sell its generation to end use customers subject to the funding requirements of Section 381, or to marketers that provide this guarantee for resale of the generation, for a period of time at least equal to the amount of time it receives incentive payments under this subdivision.

(C) Facilities that are eligible to receive funding pursuant to this subdivision shall be registered in accordance with criteria developed by the Energy Commission and those facilities may not receive payments for any electricity produced that has any of the following characteristics:

(i) Is sold under an existing long-term contract with an existing in-state electrical corporation if the contract includes fixed energy or capacity payments, except for that electricity that satisfies the provisions of subparagraph (C) of paragraph (1) of subdivision (c) of Section 399.6.

(ii) Is used onsite or is sold to customers in a manner that excludes competitive transition charge payments, or is otherwise excluded from competitive transition charge payments.

1 (iii) Is produced by a facility that is owned by an electrical  
2 corporation or a local publicly owned electric utility as defined in  
3 subdivision (d) of Section 9604.

4 (iv) Is a hydroelectric generation project that will require a new  
5 or increased appropriation of water under Part 2 (commencing  
6 with Section 1200) of Division 2 of the Water Code.

7 (D) Eligibility to compete for funds or to receive funds shall be  
8 contingent upon having to sell the output of the renewable  
9 electricity generation facility to customers subject to the funding  
10 requirements of Section 381.

11 (E) The Energy Commission may require applicants  
12 competing for funding to post a forfeitable bid bond or other  
13 financial guaranty as an assurance of the applicant's intent to move  
14 forward expeditiously with the project proposed. The amount of  
15 any bid bond or financial guaranty may not exceed 10 percent of  
16 the total amount of the funding requested by the applicant.

17 (F) In awarding funding, the Energy Commission may provide  
18 preference to projects that provide tangible demonstrable benefits  
19 to communities with a plurality of minority or low-income  
20 populations.

21 (3) Repowered existing facilities shall be eligible for funding  
22 under this subdivision if the capital investment to repower the  
23 existing facility equals at least 80 percent of the value of the  
24 repowered facility.

25 (4) Facilities engaging in the combustion of municipal solid  
26 waste or tires are not eligible for funding under this subdivision.

27 (5) Production incentives awarded under this subdivision prior  
28 to January 1, 2002, shall commence on the date that a project  
29 begins electricity production, provided that the project was  
30 operational prior to January 1, 2002, unless the Energy  
31 Commission finds that the project will not be operational prior to  
32 January 1, 2002, due to circumstances beyond the control of the  
33 developer. Upon making a finding that the project will not be  
34 operational due to circumstances beyond the control of the  
35 developer, the Energy Commission shall pay production  
36 incentives over a five-year period, commencing on the date of  
37 operation, provided that the date that a project begins electricity  
38 production may not extend beyond January 1, 2007.

39 (6) Facilities generating electricity from biomass energy shall  
40 be considered an in-state renewable electricity generation



1 technology facility to the extent that they certify to the satisfaction  
2 of the Energy Commission that fuel utilization is limited to the  
3 following:

4 (A) Agricultural crops and agricultural wastes and residues.

5 (B) Solid waste materials such as waste pallets, crates,  
6 dunnage, manufacturing, and construction wood wastes,  
7 landscape or right-of-way tree trimmings, mill residues that are  
8 directly the result of the milling of lumber, and rangeland  
9 maintenance residues.

10 (C) Wood and wood wastes that meet all of the following  
11 requirements:

12 (i) Have been harvested pursuant to an approved timber harvest  
13 plan prepared in accordance with the Z'berg-Nejedly Forest  
14 Practice Act of 1973 (Ch. 8 (commencing with Sec. 4511), Pt. 2,  
15 Div. 4, P.R.C.).

16 (ii) Have been harvested for the purpose of forest fire fuel  
17 reduction or forest stand improvement.

18 (iii) Do not transport or cause the transportation of species  
19 known to harbor insect or disease nests outside zones of infestation  
20 or current quarantine zones, as identified by the Department of  
21 Food and Agriculture or the Department of Forestry and Fire  
22 Protection, unless approved by the Department of Food and  
23 Agriculture and the Department of Forestry and Fire Protection.

24 (e) (1) Seventeen and one-half percent of the funds collected  
25 pursuant to paragraph (6) of subdivision (c) of Section 381 shall  
26 be used for a multiyear, consumer-based program to foster the  
27 development of emerging renewable technologies in distributed  
28 generation applications.

29 (2) Any funds used for emerging technologies pursuant to this  
30 subdivision shall be expended in accordance with the report,  
31 subject to all of the following requirements:

32 (A) Funding for emerging technologies shall be provided  
33 through a competitive, market-based process that shall be in place  
34 for a period of not less than five years, and shall be structured so  
35 as to allow eligible emerging technology manufacturers and  
36 suppliers to anticipate and plan for increased sale and installation  
37 volumes over the life of the program.

38 (B) The program shall provide monetary rebates, buydowns, or  
39 equivalent incentives, subject to subparagraph (C), to purchasers,  
40 lessees, lessors, or sellers of eligible electricity generating



1 systems. Incentives shall benefit the end-use consumer of  
2 renewable generation by directly and exclusively reducing the  
3 purchase or lease cost of the eligible system, or the cost of  
4 electricity produced by the eligible system. Incentives shall be  
5 issued on the basis of the rated electrical capacity of the system  
6 measured in watts, or in the amount of electricity production of the  
7 system, measured in kilowatthours, determined by the Energy  
8 Commission.

9 (C) Eligible distributed emerging technologies are  
10 photovoltaic, solar thermal electric, fuel cell technologies that  
11 utilize renewable fuels, and wind turbines of not more than 50  
12 kilowatts rated electrical generating capacity per customer site,  
13 and other distributed renewable emerging technologies that meet  
14 the emerging technology eligibility criteria established by the  
15 Energy Commission. Eligible electricity generating systems are  
16 intended primarily to offset part or all of the consumer's own  
17 electricity demand, and shall not be owned by local publicly  
18 owned electric utilities, nor be located at a customer site that is not  
19 receiving distribution service from an electrical corporation that  
20 is subject to Section 381 and contributing funds to support  
21 programs under this section. All eligible electricity generating  
22 system components shall be new and unused, and shall not have  
23 been previously placed in service in any other location or for any  
24 other application, and shall have a warranty of not less than five  
25 years to protect against defects and undue degradation of electrical  
26 generation output. Systems and their fuel resource shall be located  
27 on the same premises of the end-use consumer where the  
28 consumer's own electricity demand is located, and all eligible  
29 electricity generating systems shall be connected to the utility grid  
30 in California. The Energy Commission may require eligible  
31 electricity generating systems to have meters in place to monitor  
32 and measure a system's performance and generation. Only  
33 systems that will be operated in compliance with applicable law  
34 and the rules of the commission shall be eligible for funding.

35 (D) The Energy Commission shall limit the amount of funds  
36 available for any system or project of multiple systems and reduce  
37 the level of funding for any system or project of multiple systems  
38 that has received, or may be eligible to receive, any government  
39 or utility funds, incentives, or credit.

1 (E) In awarding funding, the Energy Commission may provide  
2 preference to systems that provide tangible demonstrable benefits  
3 to communities with a plurality of minority or low-income  
4 populations.

5 (F) In awarding funding, the Energy Commission shall develop  
6 and implement eligibility criteria and a system that provides  
7 preference to systems based upon system performance, taking into  
8 account factors, including, but not limited to, shading, insolation  
9 levels, and installation orientation.

10 (G) *The Energy Commission shall make reasonably available,*  
11 *regularly updated information on funds in the Emerging*  
12 *Renewable Resources Account that remain available for monetary*  
13 *rebates, buydowns, or equivalent incentives pursuant to this*  
14 *subdivision, broken down by those program categories established*  
15 *by the Energy Commission.*

16 (f) (1) Ten percent of the funds collected pursuant to paragraph  
17 (6) of subdivision (c) of Section 381 shall be used to provide  
18 customer credits to customers that entered into a direct transaction  
19 on or before September 20, 2001, for purchases of electricity  
20 produced by registered in-state renewable electricity generating  
21 facilities.

22 (2) Any funds used for customer credits pursuant to this  
23 subdivision shall be expended, as provided in the report, subject  
24 to the following requirements:

25 (A) Customer credits shall be awarded to California retail  
26 customers located in the service territory of an electrical  
27 corporation that is subject to Section 381 that is contributing funds  
28 to support programs under this section, and that is purchasing  
29 qualifying electricity from renewable electricity generating  
30 facilities, through transactions traceable to specific generation  
31 sources by any auditable contract trail or equivalent that provides  
32 commercial verification that the electricity from the claimed  
33 renewable electricity generating facilities has been sold once and  
34 only once to a retail customer.

35 (B) Credits awarded pursuant to this paragraph may be paid  
36 directly to electric service providers, energy marketers,  
37 aggregators, or generators if those persons or entities account for  
38 the credits on the recipient customer's utility bills. Credits may not  
39 exceed one and one-half cents (\$0.015) per kilowatthour. Credits  
40 awarded to members of the combined class of customers, other



1 than residential and small commercial customers, may not exceed  
2 one thousand dollars (\$1,000) per customer per calendar year. In  
3 no event may more than 20 percent of the total customer incentive  
4 funds be awarded to members of the combined class of customers  
5 other than residential and small commercial customers.

6 (C) The Energy Commission shall develop criteria and  
7 procedures for the identification of energy purchasers and  
8 providers that are eligible to receive funds pursuant to this  
9 paragraph through a process consistent with this paragraph. These  
10 criteria and procedures shall apply only to funding eligibility and  
11 may not extend to other renewable marketing claims.

12 (D) The commission shall notify the Energy Commission in  
13 writing within 10 days of revoking or suspending the registration  
14 of any electric service provider pursuant to paragraph (4) of  
15 subdivision (b) of Section 394.25.

16 (E) By March 31, 2003, the Energy Commission shall report to  
17 the Governor and the Legislature on how to most effectively utilize  
18 the funds for customer credits, including whether, and under what  
19 conditions, the program should be continued. The report shall  
20 include an examination of trends in markets for renewable energy,  
21 including the trading of nonenergy attributes, and the role of  
22 customer credits in these markets. The report will recommend an  
23 appropriate funding allocation for the customer credits and how  
24 implementation of the customer credits should be structured, if  
25 appropriate.

26 (F) Customer credits may not be awarded for the purchase of  
27 electricity that is used to meet the obligations of a renewable  
28 portfolio standard.

29 (g) One percent of the funds collected pursuant to paragraph (6)  
30 of subdivision (c) of Section 381 shall be used in accordance with  
31 the report to promote renewable energy and to disseminate  
32 information on renewable energy technologies, including  
33 emerging renewable technologies, and to help develop a consumer  
34 market for renewable energy and for small-scale emerging  
35 renewable energy technologies.

36 (h) (1) The Energy Commission shall adopt guidelines  
37 governing the funding programs authorized under this section and  
38 Section 399.13, at a publicly noticed meeting offering all  
39 interested parties an opportunity to comment. Substantive changes  
40 to the guidelines may not be adopted without at least 10 days'

1 written notice to the public. The public notice of meetings required  
2 by this paragraph may not be less than 30 days. Notwithstanding  
3 any other provision of law, any guidelines adopted pursuant to this  
4 section shall be exempt from the requirements of Chapter 3.5  
5 (commencing with Section 11340) of Division 3 of Title 2 of the  
6 Government Code. The Legislature declares that the changes  
7 made to this paragraph by the act amending this section during the  
8 2002 portion of the 2001–02 Regular Session are declaratory of,  
9 and not a change in existing law.

10 (2) Funds to further the purposes of this section may be  
11 committed for multiple years.

12 (3) Awards made pursuant to this section are grants, subject to  
13 appeal to the Energy Commission upon a showing that factors  
14 other than those described in the guidelines adopted by the Energy  
15 Commission were applied in making the awards and payments.  
16 Any actions taken by an applicant to apply for, or become or  
17 remain eligible and registered to receive, payments or awards,  
18 including satisfying conditions specified by the Energy  
19 Commission, shall not constitute the rendering of goods, services,  
20 or a direct benefit to the Energy Commission.

21 (i) The Energy Commission shall report to the Legislature on  
22 or before May 31, 2000, and on or before May 31 of every second  
23 year thereafter, regarding the results of the mechanisms funded  
24 pursuant to this section. Reports prepared pursuant to this  
25 subdivision shall include a description of the allocation of funds  
26 among existing, new and emerging technologies; the allocation of  
27 funds among programs, including consumer-side incentives; and  
28 the need for the reallocation of money among those technologies.  
29 The reports shall discuss the progress being made toward  
30 achieving the 17 percent target provided in subdivision (a) by each  
31 funding category authorized pursuant to subdivisions (c), (d), (e),  
32 (f), and (g) of this section. The reports shall also address the  
33 allocation of funds from interest on the accounts described in this  
34 section, and money in the accounts described in subdivision (e) of  
35 Section 381. Notwithstanding subdivisions (c), (d), (e), (f), and (g)  
36 of this section, money may be reallocated without further  
37 legislative action among existing, new, and emerging technologies  
38 and consumer-side programs in a manner consistent with the  
39 report and with the latest report provided to the Legislature  
40 pursuant to this subdivision, except that reallocations may not

1 reduce the allocation established in subdivision (d) nor increase  
2 the allocation established in subdivision (c).

3 (j) The Energy Commission shall, by December 1, 2003,  
4 prepare and submit to the Legislature a comprehensive renewable  
5 electricity generation resource plan that describes the renewable  
6 resource potential available in California, and recommendations  
7 for a plan for development to achieve the target of increasing the  
8 amount of electricity generated from renewable sources per year,  
9 so that it equals 17 percent of the total electricity generated for  
10 consumption in California by 2006. The Energy Commission shall  
11 consult with the commission, electrical corporations, and the  
12 Independent System Operator, in the development and preparation  
13 of the plan.

14 (k) The Energy Commission shall participate in proceedings at  
15 the commission that relate to or affect efforts to stimulate the  
16 development of electricity generated from renewable sources, in  
17 order to obtain coordination of the state's efforts to achieve the  
18 target of increasing the amount of electricity generated from  
19 renewable sources per year, so that it equals 17 percent of the total  
20 electricity generated for consumption in California by 2006.

